

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7620 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

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NARANBHAI KALYANBHAI WALLA

Versus

STATE OF GUJARAT

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Appearance:

MS SUMAN PAHWA for Petitioner

MR DP JOSHI, AGP, for Respondent No. 1, 2 & 3

MS PJ DAVAWALA for Respondent No. 4

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CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 03/12/1999

ORAL JUDGEMENT

#. The District Magistrate, Amreli, by his order dated 12th August, 1999, in exercise of powers under Section 3(2) of the Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980 ("P.B.M. Act" for short), detained the petitioner.

#. The grounds of detention indicate that the detaining authority found that the petitioner was involved in malpractice relating to controlled blue kerosene and sale of the same in an illegal manner. The District Supply Officer, therefore, had suspended the

licence of the petitioner for a period of 90 days from 26th July, 1999. The detaining authority came to conclusion that in order to prevent the petitioner from continuing his illegal activities, which are likely to affect the supply of essential commodity in the nature of kerosene, it was necessary to detain him under the provisions of P.B.M. Act.

#. Against the detention, the detenu/petitioner made a representation dated 16th September, 1999 (Annexure-C) through an advocate. Annexure-D is the xerox copy of the postal acknowledgment slip which indicates that the representation was despatched on 17th September, 1999 and the seal of Amreli Post Office indicates that it was received on 18th September, 1999. The representation came to be rejected and, therefore, the petitioner has approached this Court with this petition under Article 226 of the Constitution.

#. Respondents No.1, 2 and 3 are represented by Mr. D.P. Joshi, learned Assistant Government Pleader and respondent No.4-Union of India is represented by Ms. Davawala, learned Additional Central Government Standing Counsel. An affidavit is filed on behalf of respondent No.1-State of Gujarat as well as respondent No.4-Union of India.

#. The petition raises many contentions for assailing the order of detention. The main contention is that there was gross delay in forwarding the representation, by the detaining authority to the State Government.

#. Mr. Thakkar, learned advocate appearing for Ms. Pahva, learned advocate for the petitioner, submitted that the representation dated 16th September, 1999 was received on 18th September, 1999 by the detaining authority and the same came to be forwarded to the State Government on 28th September, 1999. This gross delay in forwarding the representation reflects insensitivity to the liberty of the petitioner. Mr. Thakkar submitted further that the representation was received by the State Government on 30th September, 1999, though incomplete. It was again called for from the detaining authority on 4th October, 1999. Here again, there is a delay of four days and, lastly, Mr. Thakkar submitted that there is a delay in communicating decision of the State Government. The decision was taken on 8th October, 1999 and the same was communicated on 11th October, 1999. Placing reliance on the decision of this Court in the case of Urmilaben Navnitlal Gandhi v. Commissioner of Police, Surat City,

1994(2) GLH (UJ) 10, Mr. Thakkar submitted that the petition may be allowed.

#. Mr. Joshi, learned Assistant Government Pleader appearing for respondents No.1, 2 and 3 submitted that the date of representation will not establish delay in forwarding. The date of receipt and date of forwarding of the representation by the detaining authority would be material. The date of receipt of the representation by the detaining authority is not on record and, therefore, that delay may not be considered. As regards delay in calling for the copies, Mr. Joshi tried to explain the delay by stating that intervening holidays between 30th September, 1999 and 4th October, 1999 were responsible for the delay and, therefore, it cannot be considered as an inaction on part of the Government. Mr. Joshi submitted that 9th and 10th October, 1999 were holidays and the Government offices were not working and, therefore, the decision of the Government on the representation was immediately communicated on the next working day and, therefore, there is no substance in the argument that there is gross delay at every step in considering the representation.

#. Ms. Davawala appearing for respondent No.4 submitted that affidavit is filed by Under Secretary, Mr. R.C. Dhankar of the Department of Consumer Affairs, Ministry of Food and Consumer Affairs, New Delhi, which is self-speaking and indicates that there was no lapse or delay on part of the Central Government.

#. Having regard to the contentions raised by rival sides, at the outset, certain dates, as emerging from the record, may be necessary to be considered.

12th August, 1999 - Order of detention.

23rd August, 1999 - Order of detention confirmed.

16th September, 1999 - Representation to the detaining authority by detenu.

17th September, 1999 - Representation forwarded by Registered Post A.D.

18th September, 1999 - Representation received at Amreli.

28th September, 1999 - Representation forwarded by the detaining authority to the State Government.

30th September, 1999 - Representation received by the State Government, but incomplete.

30th September, 1999 - Complete representation called telephonically.

4th October, 1999 - Reminder to the District Magistrate for sending the representation again.

5th October, 1999 - Complete representation received by the State Government.

6th October, 1999 - Dealt with by the Additional Chief Secretary.

8th October, 1999 - Decision taken on the representation.

10th October, 1999 - Decision on representation communicated to the petitioner.

##. A glance at the above sequence of events indicates that the representation dated 16th September, 1999 was forwarded to the State Government by the detaining authority on 28th September, 1999. On behalf of the petitioner, it is argued that there is a gross delay of at least 10 days. On the other side, it is argued on behalf of respondents No.1, 2 and 3 that it is not the date of representation that is important, but it is the date on which the representation is received by the detaining authority and forwarded to the Government that is important and there is nothing to indicate on which date the representation was received by the detaining authority. In this regard, it may be stated that the detaining authority has not filed any affidavit to indicate as to when it received the representation. It is the detaining authority who can have the special knowledge about this fact and it would not be proper to expect the detenu to bring on record as to when the representation was received by the detaining authority when the factum of receipt of representation is not disputed. However, it may be stated that the petitioner has produced on record at Annexure-D the postal acknowledgment slip in respect of the representation. That indicates that the representation was despatched on 17th September, 1999. there is a seal of Amreli Post Office which indicates that post was received at Amreli on 18th September, 1999. It may be noted that Annexure-D is a xerox copy of the acknowledgment slip and the date in the seal is not clearly legible. However, Mr. Thakkar, learned advocate appearing for the petitioner

has produced for inspection the original acknowledgment slip. It has been inspected both by this Court as well as the learned Assistant Government Pleader and it is found that the post was received on 18th, September, 1999, at Amreli. It can reasonably be expected or presumed that it must have been delivered to the District Magistrate, if not on 18th, latest by 19th or 20th September, 1999 and, in that event also, there is a gross delay of at least 8 to 9 days in forwarding the representation to the State Government by the detaining authority and no attempt is made by the detaining authority to tender any explanation or indicate any reason for the delay in forwarding the representation. This inaction on part of the detaining authority for about a period of 8 to 10 days reflects total insensitivity to the question of liberty of the detenu and this in itself is sufficient to vitiate the continued detention of the petitioner-detenu. A Division Bench of this Court in the case of Urmilaben Navnitlal Gandhi (supra) had a similar case where there was a delay of 5 days in considering the representation which was held sufficient to vitiate the detention. In a recent decision in the case of Rajnikant V. Buha v. State of Gujarat and Others in Special Civil Application No.7100 of 1999 dated 5.2.1999, where a delay of four days on part of the detaining authority in forwarding the representation to the State Government was considered sufficient to be fatal to the detention.

##. Again, when the representation was received on 30th September, 1999, as can be seen from the affidavit filed on behalf of the State Government, the representation was received incomplete. The office of the District Magistrate was asked to again forward the representation on that very day, i.e. on 30th September, 1999. There was no movement from the detaining authority till 4th October, 1999 when the State Government was required again to remind the detaining authority for forwarding the same and the same came to be forwarded on 5th October, 1999. Here also, there is inaction on part of the detaining authority for a period of four days, which is not explained.

##. In view of the above decisions and in view of the factual aspect of the present case regarding unexplained inordinate delay in forwarding the representation by the detaining authority to the Government resulting into delay in consideration of the representation, the petition deserves to be allowed and the same is allowed. The order of detention dated 12th August, 1999, passed in respect of the petitioner-Naranbhai Kalyanbhai Walla is

hereby quashed and set aside. The petitioner-detenu is ordered to be set at liberty forthwith, if not required in any other case. Rule is made absolute with no orders as to costs.

[ A.L. DAVE, J. ]

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